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and George Chiao*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KRISTA PERRY, an individual;
LARISSA MARTINEZ, an individual;
JAY BARON, an individual; RACHEL
PFEFFER, an individual; DIRT BIKE
KIDZ, Inc., a California corporation;
ESTELLEJOYLYNN, LLC, a New
Jersey limited liability company;
JESSICA LOUISE THOMPSON
SMITH, an individual; LIV LEE, an
individual,

Plaintiffs,

v.

SHEIN DISTRIBUTION
CORPORATION, a Delaware
corporation; ROADGET BUSINESS
PTE., LTD; ZOETOP BUSINESS CO.,
LTD; SKY XU, a/k/a CHRIS XU; and
GEORGE CHIAO,

Defendants.

CASE NO. 2:23-cv-05551-MCS-JPR

**DEFENDANT GEORGE
CHIAO'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS PLAINTIFFS' THIRD
AMENDED COMPLAINT**

Date: August 12, 2024
Time: 9:00 a.m.
Place: Courtroom 7C
Judge: Hon. Mark C. Scarsi

Complaint filed: July 11, 2023

TAC filed: April 15, 2024

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1 I. INTRODUCTION

2 Plaintiffs' Third Amended Complaint ("TAC") attempts to drag George Chiao,
 3 the President of Shein Distribution Corporation ("SDC"), into this case as part of
 4 Plaintiffs' continuing quest to expand the bounds of RICO liability. But the TAC's
 5 sparse allegations against Mr. Chiao do nothing more than describe the routine
 6 business activities of a top-level executive. The conduct alleged—(i) filing standard
 7 corporate documents with two Secretary of State offices; (ii) serving as an executive
 8 at Shein companies; (iii) participating in a Zoom call with Cassey Ho, a social media
 9 influencer who is *not* one of the Plaintiffs in this action, wherein he allegedly told her
 10 that Shein¹ did not steal her designs; and (iv) maintaining a LinkedIn profile that does
 11 not include some of his past positions—does not reflect any wrongdoing or illegal
 12 activity, much less racketeering activity, by Mr. Chiao.

13 In addition to the grounds for dismissal detailed in the Shein Defendants'
 14 Memorandum of Points and Authorities in Support of Motion to Dismiss (ECF No.
 15 57-1), which are applicable to all defendants in this case and as to which Mr. Chiao
 16 joins in full,² several independent grounds exist to dismiss the RICO claim asserted
 17 against Mr. Chiao individually. They are as follows:

- 18 • Plaintiffs fail to adequately allege a pattern of racketeering activity by Mr.
 19 Chiao. The law requires Plaintiffs to plausibly allege that *each* defendant
 20 committed at least two predicate acts of racketeering activity to establish a
 21 RICO violation. *See, e.g., In re WellPoint, Inc. Out-of-Network UCR Rates*
 22 *Litig.*, 865 F. Supp. 2d 1002, 1035-36 (C.D. Cal. 2011) ("Where RICO is
 23 asserted against multiple defendants, a plaintiff must allege at least two
 24 predicate acts by *each* defendant."). The TAC does not adequately allege

25 _____
 26 ¹ Defendants SDC, Roadget Business Pte. Ltd. ("Roadget"), and Zoetop Business Co.,
 Ltd. ("Zoetop") are referred to herein as "Shein" or the "Shein Defendants."

27 ² To avoid burdening the Court with duplicative briefs, Mr. Chiao has not repeated
 28 those arguments in this brief, but refers the Court to ECF No. 57-1, which is
 incorporated by reference herein.

1 that Mr. Chiao committed *any* predicate acts, let alone criminal copyright
 2 infringement or mail and wire fraud.³ Rather, Plaintiffs allege only that Mr.
 3 Chiao performed the routine business functions of a high-level executive,
 4 which is insufficient to state a RICO claim against him.

- 5 • Plaintiffs fail to sufficiently allege that Mr. Chiao conducted or participated
 6 in the conduct of a RICO enterprise. This Court recognized in its prior
 7 dismissal of Plaintiffs' RICO claim that allegations of "ordinary business
 8 activities or purposes" are insufficient to plead the existence of an
 9 association-in-fact enterprise. ECF. No. 39 at 8 (quoting *Woodell v.*
 10 *Expedia Inc.*, No. C19-0051JLR, 2019 WL 3287896, at *8 (W.D. Wash.
 11 July 22, 2019)). But, as noted above, that is all Plaintiffs allege with respect
 12 to Mr. Chiao's role in the purported enterprise. Moreover, the TAC does
 13 nothing to specifically allege that Mr. Chiao participated in the "operation
 14 or management" of the alleged enterprise itself, which is required to state a
 15 RICO claim against a corporate executive based on the conduct of the
 16 enterprise. *See Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993); *see also*
 17 *id.* ("liability depends on showing that the defendants conducted or
 18 participated in the conduct of the '*enterprise's* affairs,' not just [his] *own*
 19 *affairs*").

20 In addition to the flawed RICO claim, Plaintiffs' claims of copyright and
 21 trademark infringement against Mr. Chiao must also be dismissed. The TAC simply
 22 fails to include *any* allegations regarding Mr. Chiao's own involvement in the
 23 purported copyright and trademark infringement, let alone that he "authorize[d],"

24
 25 ³ In their TAC, Plaintiffs include both mail and wire fraud as predicate acts. Because
 26 the standard for mail and wire fraud are effectively the same, Mr. Chiao addresses
 27 them as one for purposes of this Motion. *See United States v. Miller*, 953 F.3d 1095,
 28 1101 n.5 (9th Cir. 2020) ("Although Walters was prosecuted under the mail fraud
 statute, 18 U.S.C. § 1341, courts typically interpret the mail and wire fraud statutes
 the same way, as their language is largely identical.").

1 “direct[ed],” or “participate[d]” in the alleged infringement as required to state a
 2 claim against him. *See Deckers Outdoor Corp. v. Fortune Dynamic, Inc.*, No. CV
 3 15-769 PSG (SSx), 2015 WL 12731929, at *8 (C.D. Cal. May 8, 2015).

4 **II. RELEVANT FACTUAL ALLEGATIONS**

5 For purposes of this motion, the most pertinent allegations of the TAC are as
 6 follows:⁴

7 **A. The Parties: Plaintiffs, Shein, and Mr. Chiao**

8 The TAC’s allegations regarding Mr. Chiao are notably sparse. The TAC
 9 alleges that Mr. Chiao “is the President of SDC and oversees the company’s
 10 operations and human resources,” and “[s]everal public filings state that [Mr.] Chiao
 11 is the President of SDC.” *Id.* ¶¶ 24, 83. Plaintiffs also allege that Mr. Chiao is “the
 12 President of Shein Technology LLC (‘Shein Tech’) and the manager of Style Link
 13 Logistics LLC (‘Style Link’),” both of which “are part of SHEIN,” *id.* ¶ 24. *See also*
 14 *id.* ¶¶ 90, 95. Plaintiffs further allege that Mr. Chiao did not list his positions at Shein
 15 Tech or Style Link on his LinkedIn profile. *Id.* ¶ 116.

16 The TAC’s allegations about Mr. Chiao’s individual purported conduct are
 17 even more threadbare. Plaintiffs allege that Mr. Chiao filed several corporate
 18 documents on behalf of SDC, Shein Tech, and Style Link in his capacity as a
 19 corporate officer, including: (i) a notice of change of principal address on behalf of
 20 Style Link, *id.* ¶¶ 91, 116; (ii) Articles of Organization on behalf of Style Link, *id.* ¶
 21 116; (iii) a Statement of Information on behalf of SDC, *id.*; (iv) a foreign registration
 22 statement on behalf of Shein Tech, *id.*; and (v) a Business Entity Report on behalf of
 23 Style Link, *id.* Plaintiffs also allege that Mr. Chiao signed “a declaration in support
 24 of [Shein Fashion Group, Inc.’s] motion to dismiss” in an unrelated lawsuit. *Id.* ¶ 86.

25
 26 ⁴ As required by Rule 12, Mr. Chiao takes these allegations as true for purposes of
 27 this Motion. At bottom, however, the TAC is riddled with allegations that are
 28 demonstrably false or presented in a manner that divorces them from the truth. But
 that is a matter for another day.

1 And, finally, Plaintiffs further allege that Mr. Chiao spoke with Cassey Ho, a social
 2 media influencer who alleged that Shein had “stolen her designs,” and told her that
 3 “SHEIN did not steal her designs, that SHEIN is just a marketplace, [that Shein] has
 4 no idea whether third-party sellers have stolen designs ... [and] that SHEIN was
 5 doing nothing illegal.” *Id.* ¶ 116. That’s it; nothing more.

6 **B. Plaintiffs’ Claims Against Mr. Chiao**

7 Based on these factual allegations, Plaintiffs purport to assert a RICO claim
 8 against Mr. Chiao by alleging predicate acts of criminal copyright infringement and
 9 mail and wire fraud. TAC ¶¶ 108-120. But there are no specific allegations that Mr.
 10 Chiao himself was in any way involved in the commission of the alleged predicate
 11 acts. Rather, the TAC conclusorily alleges that Mr. Chiao “individually conducted,
 12 participated in, engaged in, and operated and managed the affairs of SDC, SFG,
 13 Roadget, Zoetop, Guangzhou, Style Link, or Shein Tech through a pattern of
 14 racketeering activity” consisting of “acts of criminal copyright infringement [] and
 15 wire fraud[.]” *Id.* ¶ 212. But the TAC’s only specific allegations pertaining to Mr.
 16 Chiao relate to his routine business activities as a top-level executive, and do not
 17 allege any activity by Mr. Chiao that could conceivably constitute criminal copyright
 18 infringement or mail and wire fraud, let alone the operation or management of a
 19 RICO enterprise. *See supra* Section II(A).

20 Plaintiffs also attempt to assert eleven copyright and trademark infringement
 21 claims against Mr. Chiao. TAC ¶¶ 121-209. But notably absent from the TAC is
 22 any allegation that Mr. Chiao was personally involved in the purported infringement.

23 **III. LEGAL STANDARD**

24 Under Rule 12(b)(6), dismissal is required where the complaint “lacks a
 25 cognizable legal theory or sufficient facts to support a cognizable legal theory.”
 26 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)
 27 (citation omitted). Whether a complaint contains sufficient factual matter turns on
 28 whether the claim stated is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678

(2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.] Factual allegations must be enough to raise a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 555 (internal citations omitted).

IV. PLAINTIFFS’ RICO CLAIM SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

To state a civil RICO claim, a plaintiff must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as “predicate acts”) (5) causing injury to the plaintiff’s business or property. *Swartz v. KPMG LLP*, 476 F.3d 756, 760-61 (9th Cir. 2007). In addition to the arguments set forth in the Shein Defendants’ Motion to Dismiss, which show that the TAC fails to adequately allege the elements of conduct, enterprise, racketeering activity, and causation with respect to *any* Defendant, ECF No. 57-1 at 11-23, Plaintiffs’ TAC also fails to sufficiently allege a RICO violation against Mr. Chiao individually for several independent reasons.

A. Plaintiffs Fail to Plausibly Allege That Mr. Chiao Committed Any Predicate Acts of Racketeering.

Plaintiffs must allege that *each* defendant committed at least two predicate acts of racketeering activity to establish a RICO violation. *See, e.g., In re WellPoint*, 865 F. Supp. 2d at 1035-36. The TAC, however, fails to allege that Mr. Chiao committed *any* predicate act of racketeering activity. This alone necessitates the dismissal of the RICO claim against him.

1. Plaintiffs Fail to Allege a Predicate Act of Criminal Copyright Infringement Against Mr. Chiao.

As explained in the Shein Defendants’ Motion to Dismiss, Plaintiffs must plausibly allege that Defendants “willfully” infringed Plaintiffs’ copyrights to establish a predicate act of criminal copyright infringement. ECF No. 57-1 at 12-13.

1 This requires Plaintiffs to allege that a defendant acted with the “specific intent” to
2 violate a person’s copyright. *Id.* (citing *United States v. Liu*, 731 F.3d 982, 989-90
3 (9th Cir. 2013); *Bassett v. Jensen*, 459 F. Supp. 3d 293, 314 (D. Mass. 2020) (finding
4 defendants’ conduct did not rise to the level of criminal copyright infringement,
5 which requires that a defendant “specifically intended to violate someone’s
6 copyright”); *Stewart v. Wachowski*, No. CV 03-2873 MMM (VBKx), 2005 WL
7 6184235, at *6 n.33 (C.D. Cal. June 14, 2005) (“conditions of mind may be averred
8 generally, plaintiff must, nonetheless, specifically allege the events which give rise
9 to a strong inference that defendants had knowledge of their wrongful conduct,
10 misrepresentations, or omissions.”)).

11 The TAC comes nowhere close to sufficiently alleging that Mr. Chiao acted
12 with a specific intent to violate anyone’s copyright. The criminal copyright claim in
13 the TAC, like previous versions of the complaint, is premised upon Plaintiffs’
14 speculation that Shein employs the use of a secretive computer “algorithm” that
15 independently “spits out a design, which is likely to be an infringement[.]” *See, e.g.,*
16 TAC ¶ 43. Plaintiffs then conclusorily allege, without any factual support, that “the
17 algorithm is *Defendants’* purposeful creation.” *See id.* ¶ 37 (emphasis added). But
18 the TAC contains absolutely no allegation that *Mr. Chiao* had any personal role in
19 creating, implementing, or otherwise using the algorithm. And the TAC contains no
20 other allegations from which the Court may infer a specific intent by Chiao to violate
21 Plaintiffs’ copyrights. *See supra* Section II(A). Absent allegations that Mr. Chiao
22 himself willfully infringed Plaintiffs’ copyrights, Plaintiffs cannot establish that Mr.
23 Chiao committed criminal copyright infringement. *See Mattel, Inc. v. MGA Ent.,*
24 *Inc.*, 782 F. Supp. 2d 911, 1039 (C.D. Cal. 2011) (criminal copyright infringement
25 not sufficiently alleged as to former Mattel employee because he “merely worked for
26 MGA Mexico and distributed Bratz products; there is no allegation that he
27 participated in MGA’s alleged acts of infringement of the Bratz works” and “no
28

1 reasonable fact-finder could conclude that Machado *willfully* infringed any
2 copyrights in these items”).

3 **2. Plaintiffs Fail to Allege That Mr. Chiao**
4 **Committed Mail or Wire Fraud.**

5 Additionally, Plaintiffs fail to allege that Mr. Chiao committed any act of mail
6 or wire fraud. As discussed in the Shein Defendants’ Motion to Dismiss, plaintiffs
7 asserting a violation of the wire fraud statute are required to plead “particularized
8 allegations” of “the factual circumstances of the fraud itself.” ECF No. 57-1 at 16.
9 This requires that Plaintiffs identify, at a minimum, the “who, what, when, where,
10 and how” of the fraud, “as well as what is false or misleading about” it, and “why it
11 is false[.]” *Id.*

12 Even setting aside the fact that Plaintiffs have not alleged a scheme to defraud
13 (*see* ECF No. 57-1 at 14-16), Plaintiffs have not detailed *any* alleged act of fraud
14 perpetrated by Mr. Chiao himself, let alone with the requisite particularity. Plaintiffs
15 allege merely that Chiao is a corporate officer (and that his LinkedIn profile reflected
16 as much),⁵ that he filed a declaration and routine corporate statements, and that he
17 allegedly told a social media influencer who is not a party to this case that Shein “was
18 doing nothing illegal” when she alleged that Shein infringed upon her designs. *See*
19 TAC ¶¶ 24, 83, 86, 88, 90-91, 95, 116. These allegations, even if true, cannot support
20 a reasonable inference that Mr. Chiao committed or facilitated any fraud or deception.
21 *See* Dkt. 57-1 at 17-19; *see also Ferrari v. Mercedes-Benz USA, LLC*, No. 15-cv-
22 04379-YGR, 2016 WL 7188030, at *4 (N.D. Cal. Dec. 12, 2016) (“Even if these
23 allegations were sufficient to state that [individual officers] played a role in a RICO
24 enterprise, distinct from their simply being officers of the alleged enterprise at the

25 ⁵ Plaintiffs allege that Chiao’s LinkedIn profile “omits any reference to his roles at
26 Style Link or Shein Tech, enabling SHEIN to foster the illusion that Style Link and
27 Shein Tech are independent of SDC,” *see* TAC ¶ 116, but it is unclear how such an
28 omission—even if true—could possibly be fraudulent or deceptive for purposes of
the wire fraud statute. *See* Mot. to Dismiss at 17-19.

1 time, the SAC does not allege with specificity the predicate acts of wire fraud and
2 mail fraud, or specifics about how [the officers] participated in that conduct.”).

3 Nor do Plaintiffs specify Mr. Chiao’s role in the allegedly fraudulent scheme,
4 as is required to state a claim for wire fraud under Rule 9(b). *See* Dkt. 57-1 at 17.
5 As with the other Shein Defendants, the TAC only includes descriptions of Mr.
6 Chiao’s general business activities. *See* TAC at ¶¶ 24, 83, 86, 88, 90-91, 95, 116.
7 This is wholly insufficient. *Drake v. Toyota Motor Corp.*, No. 2:20-cv-01421-SB-
8 PLA, 2020 WL 7040125, at *11 (C.D. Cal. Nov. 23, 2020) (“Though the Plaintiffs
9 no doubt ‘describe with sufficiently particularized detail the operations and the role
10 of each Defendant’ within Toyota, Plaintiffs fail to provide detailed allegations of[]
11 the various roles *played in the alleged conspiracy.*”) (citations omitted).

12 **B. Plaintiffs Fail to Plausibly Allege That Mr. Chiao**
13 **Participated in the Conduct of a RICO Enterprise.**

14 To state a RICO claim against Mr. Chiao, Plaintiffs must also allege that he
15 “conduct[ed] or participate[d], directly or indirectly, in the conduct” of an enterprise.
16 18 U.S.C. § 1962(c). The term “enterprise” includes “any individual, partnership,
17 corporation, association, or other legal entity, and any union or group of individuals
18 associated in fact although not a legal entity.” 18 U.S.C. § 1961(4).

19 In their Twelfth Claim for Relief, Plaintiffs allege that Mr. Chiao conducted or
20 participated in the conduct of two alternative RICO enterprises: (i) an
21 association-in-fact enterprise that includes Mr. Chiao, among other members; and
22 (ii) several distinct “legal entity” enterprises.⁶ TAC ¶¶ 211-212. But, for the reasons
23 discussed below, Plaintiffs have failed to adequately allege the existence of an
24

25 ⁶ To the extent Plaintiffs allege that Mr. Chiao himself is an enterprise (TAC ¶ 213),
26 Plaintiffs’ RICO claim against Mr. Chiao fails for the simple reason that a RICO
27 enterprise cannot also be a RICO defendant. *See Rae v. Union Bank*, 725 F.2d 478,
28 481 (9th Cir. 1984) (holding that a RICO enterprise “cannot also be the RICO
defendant”).

1 association-in-fact enterprise or that Mr. Chiao conducted or participated in the
2 conduct of *any* purported enterprise.

3 **1. Plaintiffs Fail to Adequately Allege The Existence**
4 **of an Association-in-Fact Enterprise.**

5 Plaintiffs have not adequately alleged the existence of an association-in-fact
6 enterprise. TAC ¶ 211. To plead an association-in-fact enterprise, a plaintiff must
7 allege that the association “(1) has a common purpose, (2) is an ongoing organization,
8 and (3) its various associates function as a continuing unit.” *Woodell*, 2019 WL
9 3287896, at *7 (citing *Odom v. Microsoft Corp.*, 486 F.3d 541, 552-53 (9th Cir.
10 2007)). However, “[a]llegations that are consistent with ordinary business activities
11 or purposes are insufficient when pleading an association-in-fact RICO enterprise.”
12 *Id.* at *8 (citation omitted). Indeed, this Court has already dismissed Plaintiffs’ RICO
13 claim once before because Plaintiffs’ enterprise allegations were “too sparsely
14 pleaded for at least some of the alleged members of the enterprise” and were
15 “consistent with ordinary business activities or purposes.” ECF No. 39 at 8 (citing
16 *Woodell*, 2019 WL 3287896, at *8; *Neerman v. Cates*, No. CV 22-2751 PA (PVCx),
17 2022 WL 18278377, at *6 (C.D. Cal. Dec. 28, 2022)). As explained in the Shein
18 Defendants’ Motion to Dismiss, the TAC does nothing to remedy this fatal flaw.
19 ECF No. 57-1 at 16-17.

20 Plaintiffs’ addition of Mr. Chiao does not change the outcome. There are
21 simply no facts alleged to support Plaintiffs’ assertion that Mr. Chiao shares a
22 common purpose of “advancing SHEIN’s business of selling clothing and apparel
23 and enabling SHEIN to misappropriate and profit from the intellectual property of
24 others with impunity.” *See* TAC ¶ 211. To the contrary, the TAC merely alleges
25 that Mr. Chiao engaged in ordinary business activities as an executive at a global
26 group of affiliated companies. Specifically, Plaintiffs allege that: Mr. Chiao filed
27 basic corporate documents on behalf of SDC, Shein Tech, and Style Link, *id.* ¶¶ 86,
28 90-91, 116; Mr. Chiao had a Zoom call with a non-party social media influencer,

1 wherein he allegedly told her that Shein did not steal her designs, *id.* ¶ 116; and Mr.
2 Chiao maintains a LinkedIn profile that references his role at SDC but not his roles
3 at Style Link or Shein Tech, *id.* ¶ 116. Consistent with this Court’s prior ruling, such
4 allegations of “ordinary business activities or purposes” are insufficient to plead the
5 existence of an association-in-fact enterprise. ECF No. 39 at 8.

6 **2. Plaintiffs Do Not Adequately Allege That Mr. Chiao**
7 **Participated in the Conduct of Any RICO Enterprise.**

8 Plaintiffs have also failed to sufficiently allege that Mr. Chiao “conduct[ed] or
9 participate[d] in the conduct” of *any* alleged enterprise. 18 U.S.C. § 1962(c). To
10 plead this element, Plaintiffs must allege that Mr. Chiao “participate[d] in the
11 operation or management of the enterprise itself.” *Reves*, 507 U.S. at 185; *see also*
12 *id.* (“liability depends on showing that the defendants conducted or participated in
13 the conduct of the ‘enterprise’s affairs,’ not just their *own* affairs”); *Woodell*, 2019
14 WL 3287896, at *8 (the “conduct” element requires a plaintiff to allege that a
15 defendant has “some part in the directing of the enterprise’s affairs”) (citation
16 omitted).

17 Here, however, the TAC is devoid of any specific allegations that Mr. Chiao
18 participated in the “operation or management” of the purported
19 association-in-fact-enterprise or legal entity enterprises themselves. Aside from the
20 bald allegations that Mr. Chiao “oversees [SDC’s] operations and human resources”
21 and serves as the President of Shein Tech and the manager of Style Link, TAC ¶ 24,
22 there are simply no allegations that Mr. Chiao played any part in directing the affairs
23 of the alleged enterprises.⁷ To the contrary, as discussed above, Plaintiffs’
24 allegations merely show that Mr. Chiao carried out ordinary business functions that
25 had no connection whatsoever to the alleged conduct of the purported enterprises.

26 _____
27 ⁷ In fact, there are no allegations at all tying Mr. Chiao to most of the alleged “legal
28 entity” enterprises, including Shein Fashion Group, Inc., Roadget, Zoetop,
Guangzhou Shein International Import & Export Co. Ltd., and Fashion Marketing
and Merchandising Group, Inc. *See* TAC ¶ 212.

1 These mundane and generalized allegations fall far short of showing that Mr. Chiao
2 somehow participated in the operation or management of any alleged enterprise. *See*,
3 *e.g.*, *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prods. Liab. Litig.*, 497 F. Supp.
4 3d 552, 609 (N.D. Cal. 2020) (“The Other Director Defendants can be held liable
5 only if they personally participated, authorized, or directed specific fraudulent acts
6 or under RICO conducted or directed specific acts of the distinct Enterprise separate
7 and apart from routine business conducted by the Directors as a consequence of their
8 positions on the Board. Those sorts of acts have not been adequately alleged.”).

9 Plaintiffs’ suggestion otherwise would threaten to turn every corporate officer
10 into a RICO defendant for merely performing the functions associated with their job.
11 *See, e.g., Ferrari*, 2016 WL 7188030, at *3 (“[H]ere the allegations simply imply
12 that any CEO could be a proper RICO ‘person’ if the corporation is engaged in
13 fraudulent conduct that involves the use of the wires or mail. Even a liberal reading
14 of the RICO pleading requirements is stretched to the breaking point with such a
15 theory.”). This Court should decline to entertain such an expansive reading of RICO.

16 **V. PLAINTIFFS’ INFRINGEMENT CLAIMS AGAINST MR. CHIAO**
17 **MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM**

18 Plaintiffs also assert eleven causes of action for copyright and/or trademark
19 infringement against all Defendants, including Mr. Chiao. *See* TAC (Counts I-XI).
20 But notably absent from the TAC are any allegations from which this Court could
21 find Mr. Chiao personally liable for such infringement.

22 It is well established that a corporate officer may not be held personally liable
23 for a corporation’s alleged misconduct simply by virtue of being an officer of the
24 company and performing the associated job duties. *See Deckers*, 2015 WL 12731929,
25 at *9. To the contrary, a corporate officer may only be personally liable for a tort
26 that “he authorizes or directs or in which he participates[.]” *Id.* at *8. In the Ninth
27 Circuit, “[c]ases which have found personal liability on the part of corporate officers
28 have typically involved instances where the defendant was the ‘guiding spirit’ behind

1 the wrongful conduct . . . or the ‘central figure’ in the challenged corporate activity.”⁸
2 *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 523 n.10 (9th Cir. 1989) (citation omitted);
3 *see also Novell, Inc. v. Unicom Sales, Inc.*, 2004 WL 1839117, at *17 (N.D. Cal. Aug.
4 17, 2004) (“corporate officers, shareholders, and employees are personally liable for
5 the corporation’s copyright and trademark infringements when they are a ‘moving,
6 active conscious force’ behind the corporation’s infringement”) (citations omitted).

7 Here, there are *no* allegations that Mr. Chiao “authorize[d],” “direct[ed],” or
8 “participate[d]” in the alleged copyright or trademark infringement, let alone that he
9 was the “guiding spirit” behind the alleged copyright or trademark infringement. In
10 fact, there are no specific allegations tying Mr. Chiao to Plaintiffs’ copyright or
11 trademark infringement claims at all. Accordingly, Plaintiffs’ claims of copyright
12 and trademark infringement against Mr. Chiao must be dismissed.⁹ *See Carson v.*

13 ⁸ For instance, courts have found officers personally liable where an officer: “in his
14 own personal name, displayed [the infringing Logo] on his trademark application,”
15 sought to register [the Marks] “in an attempt to interfere with Plaintiff’s business,”
16 and was “the sole owner of [the companies] which [sold] products bearing Plaintiff’s
17 Marks and the Logo,” *see Aardwolf Indus., LLC v. Abaco Machs. USA, Inc.*, No. CV
18 16-1968-GW(JEMx), 2016 WL 11497538, at *5 (C.D. Cal. Aug. 11, 2016); and
19 where an officer “designed Defendants’ [allegedly infringing] tequila bottles; and []
20 oversaw the marketing and sale of [the allegedly infringing] Tequila during her tenure
21 in charge of the company,” *see Globefill Inc. v. Elements Spirits, Inc.*, No. 10-CV-
22 2034 CBM (PLAx), 2014 WL 12554236, at *6 (C.D. Cal. Mar. 17, 2014) (alterations
23 added), *aff’d*, 640 F. App’x 682 (9th Cir. 2016).

24 ⁹ In their Motion for Leave to File the TAC, Plaintiffs suggested that Mr. Chiao might
25 be held liable for copyright infringement if he has a “direct financial interest in [the
26 infringement].” *See* ECF No. 48 at 7 (citing *Fonovisa, Inc. v. Cherry Auction, Inc.*,
27 76 F.3d 259, 262 (9th Cir. 1996)). As an initial matter, *Fonovisa* is inapposite, as it
28 discusses “a principle for enforcing copyrights against a defendant whose economic
interests were intertwined with the direct infringer’s, *but who did not actually employ
the direct infringer.*” *Fonovisa*, 76 F.3d at 262 (emphasis added). Secondly, no facts
creating a “direct financial interest” on Mr. Chiao’s part are alleged in the TAC, nor
could a direct financial interest arise from the mere allegation that Mr. Chiao is an
executive of certain of the Defendants.

Plaintiffs’ Motion for Leave also appeared to suggest that Mr. Chiao could be
“contributorily liable for trademark infringement.” ECF No. 48 at 7. As an initial

1 *Verismart Software*, No. C 11–03766 LB, 2012 WL 1038662, at *5 (N.D. Cal. Mar.
2 27, 2012) (dismissing copyright infringement claims against individual defendants,
3 as complaint allegations did “not permit a reasonable inference that the ... individual
4 defendants were the moving forces behind the alleged infringement”).

5 **VI. CONCLUSION**

6 For the foregoing reasons, the Court should dismiss Plaintiffs’ TAC against
7 Mr. Chiao with prejudice.

8
9 DATED: June 17, 2024

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10
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23 matter, there is no contributory infringement claim even raised in the TAC. But even
24 if such a claim was raised, Plaintiffs cannot state a claim of contributory trademark
25 infringement against Mr. Chiao. To be liable for contributory trademark
26 infringement, “a defendant must have (1) intentionally induced the primary infringer
27 to infringe, or (2) continued to supply an infringing product to an infringer with
28 knowledge that the infringer is mislabeling the particular product supplied.” *Ripple*
Labs Inc. v. YouTube LLC, No. 20-cv-02747-LB, 2020 WL 6822891, at *3 (N.D. Cal.
Nov. 20, 2020) (citation omitted). Plaintiffs’ allegations against Mr. Chiao come
nowhere close to meeting this standard.

L.R. 11-6.1 CERTIFICATION

The undersigned, counsel of record for Defendants, certifies that this brief contains 4,337 words, which complies with the word limit of L.R. 11-6.1.

PAUL HASTINGS LLP

DATED: June 17, 2024

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